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Dr. Steve Crocker, Chairman of the ICANN Board;
Fadi Chehadé, ICANN President & CEO;
Susana Bennett, ICANN COO;
Akram Attallah, ICANN Head of Generic Domains Division;
Christine Willett, ICANN Vice-President of gTLD Operations;
Cherine Chalaby, Chair of the New gTLD Committee;
Heather Dryden, Chair of Government Advisory Committee;
John Jeffrey, ICANN General Counsel;
Hannah Tümpel, Manager, International Chamber of Commerce;
Ana Sylvia Prado, Deputy Manager, International Chamber of Commerce; and
Špela Košak, Deputy Manager, International Chamber of Commerce

Re: *Concerns over New gTLD Program, NGPC Material Changes and their Impact on Community Objections*

Dear Dr. Crocker, et al:

This is a follow-up our Letter to ICANN concerning the new gTLD Program dated July 12th, 2013.¹ We write to formally record our concerns over the New gTLD Program process relating to the allowance of material changes to Applications via implementation of the New gTLD Program Committee's (NGPC) resolutions, and their impending potential to create prejudicial "exceptions" pertaining to acceptance of GAC advice on enhanced safeguards and exclusive access/restricted generic strings.

Material Changes to Applicant Guidebook and Community Objections

Specifically, we are concerned that there is no way for Applicants to know which parts of the Applicant Guidebook (AGB) to rely upon and which parts to disregard. Our concerns relate to ICANN's and the NGPC's recurring material changes to the AGB created after the Community Objections' submission date. These new resolutions not specified in the AGB (as well as the additional Public Interest Commitment Specifications²) would harm bona fide and

¹ <http://www.icann.org/en/news/correspondence/roussos-to-crocker-et-al-12jul13-en>

² <http://newgtlds.icann.org/en/announcements-and-media/announcement-06mar13-en>

responsible Applicant(s) in a contention set according to ICANN's Material Changes rules,³ as well as harm Community Objectors who had no knowledge of any GAC Advice or new NGPC resolutions upon Objection submission.

It should be noted again that Community Objectors relating to sensitive music-themed strings filed timely Community Objections with the ICC that pre-date the GAC Beijing Communiqué⁴ or any New gTLD Program Committee (NGPC) resolution. The Objections identify potential problems with Applicant policies, many of which are the same concerns GAC voiced for sensitive strings (like .MUSIC), e.g. Applicants' lack of enhanced safeguards; the need for an appropriate governance structure; and requirement that restricted/exclusive strings launched in a manner to serve global public interest. Subsequently, ICANN's NGPC responded to GAC and accepted relevant GAC advice⁵ relating to Category 2 enhanced safeguards and also working towards resolution pertaining to Category 1 safeguards⁶ relating to sensitive strings such as music-themed gTLDs.

More importantly, on September 28, 2013, the NGPC adopted a scorecard resolution⁷ pertaining to the "Registry Agreement as approved by the NGPC, which prohibits exclusive registry access for generic strings (emphasis added)." This resolution "is consistent with the GAC advice" and the NGPC directed ICANN "staff to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguard Advice that are prepared to enter into the Registry Agreement as approved." Such a policy would allow Applicants to materially change their Applications without regard for the negative effect against competing Applicants and be in direct contravention to the AGB.

GAC's Advice and NGPC Resolution Impact on Community Objections

It should be emphasized that the Community Objections to Amazon's music-themed applications (for .music, .song, .tunes) and also Far Further's (.music LLC) application (for .music) relate to "exclusive registry access for generic strings" which are prohibited by the Registry Agreement. For example, the community-based application for .music by .music LLC dictates that the:

“.Music Registry will set itself up as a sole registrar, providing reseller capability to Community Member Associations, who will in turn sell .Music domains to their memberships.”⁸

³ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

⁴ In its Beijing Communiqué advice to ICANN, GAC has identified music-themed gTLDs (.music, .song, .tunes and .band) as sensitive strings to which enhanced safeguards should apply to, https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communiqué%20April2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

⁵ <https://www.icann.org/en/news/correspondence/crocker-to-dryden-06jun13-en.pdf>, Annex 1, GAC Register #5, P.11

⁶ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm>

⁷ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>

⁸ Far Further Application, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1659?t:ac=1659>, 28.4.3, 28.4.3 Policies and Procedures



As in the case of Amazon, this policy is anti-competitive and in clear violation of ICANN's Application Guidebook which states that TLD registries commit to provide "non-discriminatory access to Registry Services to all ICANN-accredited registrars" while ensuring that they will not "directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems."⁹

Furthermore, .music LLC's community-based Application's "defined-criteria" for registration Eligibility requires "[c]urrent registration and verifiable membership in a global music community organization that was organized and in existence prior to 2007."¹⁰ This Eligibility policy is not in the global public interest because it eliminates participation from any newly-formed, legitimate music associations or organizations and their members, especially those from developing countries.

As noted, the new NGPC resolutions raise potential conflicts that could be abused by Applicants to circumvent the Community Objections, and may also result in wholesale granting of "material changes" to Applications to the detriment of those in competing strings. It is clear that any new ICANN gTLD Application policy changes not clearly described in any music-themed Application should be treated as material changes (as defined in the AGB) to individual Applicant Applications. Therefore, we respectfully request that these concerns are recorded and evaluated.

To avoid such issues from materializing we request ICANN verify with the ICC and the Community Objection Panelists that **any new policies and changes made to Applications by virtue of ICANN resolutions or action after the date that Objections were filed not to be considered as a loophole for objected-to Applicants to circumvent a fair Objection process. As required by the Applicant Guidebook each Application should be judged as it was submitted (in April, 2012) without any material changes affecting contention sets.**

Community Objection Decision Precedent, Predictability and Consistency

There is precedent for citing GAC advice or ICANN NGPC resolutions by Panelists and is further evidence of the validity and the consistency of the claims made by Community Objectors for music-themed strings. In the case of .ARCHITECT¹¹, Expert Panelist Andreas Reiner agreed with much of the GAC advice. Expert Panelist Reiner determined that a GAC-identified, sensitive string such as .ARCHITECT should not be open because opening the sensitive string to others "would create an interference in the core activities of the community"

⁹ Applicant Guidebook, <http://newgtlds.icann.org/en/applicants/agb>, Section 2.9 (a) and Specification 9, Section 1(a), Base Agreement & Specifications

¹⁰ Applicant's Answer to Question 20a, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1659?t:ac=1659>

¹¹ http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP_384_ICANN_1_Expert_Determination/, Section 178, Pages 58-59



and also “internet users would necessarily assume that those that use the domain are licensed architects” or legitimate members of that community i.e. not pirates or non-licensed architects. In the case of architects (which is similar in nature to the cases of open, sensitive, music-themed strings which are highly vulnerable to piracy and impersonation), the Expert Panelist concluded that “there is a considerable risk that internet users would be misled and this would cause harm to reputation of the community.”

We urge ICANN, the ICC and the Expert Panelists to strive for decisions that are transparent, defensible and more importantly consistent with ICANN NGPC resolutions and GAC advice to ensure reliability and predictability in alignment with New gTLD Program objectives to increase competition, consumer choice and trust.

We kindly request this letter be posted publicly on the ICANN Correspondence page. Thank you for your prompt attention to these important matters.

Sincerely,

Constantine Roussos
.MUSIC
Founder

.MUSIC:
<http://music.us>

.MUSIC Supporting Music Organizations:
<http://www.music.us/supporters.htm>

cc: Jason Schaeffer, Esquire